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THE AMERICAN LAW REGISTER.

JUNE, 1888.

LAW SCHOOLS AND LEGAL EDUCATION.

IN the February number of the AMERICAN LAW REGISTER, there appeared an interesting article from the pen of Mr. Henry Budd, discussing the relation of law schools to legal education. The motive which inspired the writing of the article, was a commendable one, and the desire of the writer to have a higher standard established, governing admissions to the bar, will be quite generally concurred in. No one could read the article in question, however, without readily perceiving that the law schools of the United States were considered to be, in large measure, responsible for the admission to the bar of men "scantily prepared for the work of their profession and in many cases not even so sufficiently equipped, as to be able to acquire that learning, which in many cases is necessarily postponed until after the technically called studentship, has come to an end, not understanding thoroughly the foundations of the law." It is evidently the impression of the writer that a law school is, on the whole, a pretty poor place for one who really wants to know the law, and that the present system of acquiring a legal education, is far inferior to that of former times, to "the old American system of legal education," when "the centre of instruction was the office of the preceptor."

The idea that law can be best studied, as other sciences are studied, in colleges and universities, is not an idea of recent growth. In the Roman Empire there were three famous schools of law, one at Constantinople, another at Rome, and a third at

Berytus. Savigny tells us, that Rome was always considered as the proper place of study for those inhabitants of the provinces, who wished to receive a complete law education. The school at Berytus, in Phœnicia, was established towards the beginning of the third century, and it acquired very great celebrity. Upon the revival of the study of Roman law in Europe, it was customary for students from all Europe, to resort to the famous law school of Bologna, established about the year 1100. In the sixteenth century it was equally the appropriate thing for law students to resort to France and to attend law lectures at the school at Bourges, and at Toulouse. Spain and the Netherlands had celebrated schools at Leyden and Utrecht which attracted large numbers of students.

In England, law schools were established at a very early period. Sir Edward Coke, in the preface to the second part of his *Institutes*, says: "After the making of *Magna Charta* and *Charta de Foresta*, divers learned men in the laws (that I may use the words of the record) kept schools of the law in the city of London, and taught such as resorted to them the laws of the realm." The Inns of Court were schools of law, and Lincoln's Inn dates back to the time of Edward II, and Gray's Inn to the time of Edward III. Chancellor FORTESQUE, writing in the time of Henry VI, tells us that at that time there were ten Inns of Chancery, to each of which belonged a hundred students at least, and to some more than that number: That most of these were young, learning the first principles of law, and that as they advanced in learning and grew to riper years, they were admitted into the larger Inns, called the Inns of Court, and that these larger Inns, which were four in number, had two hundred students apiece, or nearly so.

But is a law school the proper place to study law? The interest attaching to the question will justify the length of the following excerpt, taken from a lecture delivered in Dublin University by Francis Stoughton Sullivan, and published in London in 1772. It is as follows: "That the universities, the seats of all other branches of learning, are the places most fit for this purpose (the study of law), hath been so fully proved by Mr. Blackstone, in his preliminary lecture, not long since reprinted in this kingdom, that it will be much more proper and

decent for me to refer gentlemen to that excellent performance, than to weaken his arguments, by repeating, in other words, what he has demonstrated, with such force of reason, and elegance of expression. I shall only add to what he hath observed, that every other nation of Europe hath admitted the profession of their municipal laws into their universities, and that the same hath been the opinion and practice of almost every age and country, as far back as the lights of history extend. Were not the laws of Egypt, as well as their religion, phisic, history, and sciences, taught in the colleges of their priests? It is allowed by all, that the principal employment in the schools of the prophets was the study of the law of Moses; and, to come to more modern times, the very first universities that were ever founded by royal authority, were the works of Roman emperors, and erected merely for this profession. The famous academies of Rome for the West, and of Berytus for the East, furnished that extensive empire with a constant succession of excellent lawyers, whose names, and the fragment of whose works, were held in the highest honor until the inundation of barbarians from the North of Europe, and the prevailing arms of the Saracens in the East extinguished the Roman government in those parts. But that of Constantinople, founded soon after the translation of the seat of empire thither, had a more happy destiny, flourished with distinguished reputation to these latter ages, and perished not, but with the empire itself, when that city was taken by the Turks. Nay, so sensible were the Arabs themselves, who destroyed the Roman academy of Berytus, of the utility of such institutions, that for their own law, they erected others of the same nature in Bagdad."

If it be replied that the extract quoted was the opinion of a gentleman who has been in his grave for more than a century, and that the experience of later times does not justify the opinion expressed, then we may be allowed to supplement that opinion by another of more recent date and none the less emphatic on that account. The opinion referred to is taken from a report made to the American Bar Association, by its Committee on Legal Education, at a meeting held at Saratoga in August, 1879. It is as follows: "There is little, if any, dispute now as to the relative merit of education by means of

law schools, and that to be got by mere practical training or apprenticeship as an attorney's clerk. Without disparagement of mere practical advantages, the verdict of the best informed is in favor of the schools. The benefits which they offer are easily suggested, and are of the most superior kind. They afford the student an acquaintance with general principles, difficult, if not impossible to be otherwise obtained: they serve to remove difficulties which are inherent in scientific and technical phraseology, and they, as a necessary consequence, furnish the student with the means for clear conception and accurate and precise expression. They familiarize him with leading cases, and the application of them to discussion. They give him the valuable habit of attention, teach him familiar maxims, and offer him the priceless opportunities which result from contact and generous emulation. They lead him readily to survey the law as a science, and imbue him with the principles of ethics as its true foundation. Disputing, reasoning, reading, and discoursing, become his constant exercises: he improves remarkably as he becomes acquainted with them, and obtains progress otherwise beyond his reach."

We place this opinion by the side of that of Mr. Budd, and must say that in the opinion of the writer the facts justify the conclusion expressed by the Committee of the American Bar Association in favor of the education afforded by the schools. We willingly concede, and in fairness are bound to concede, that there is a respectable minority in the profession who still retain a partiality for the office as against the law school. But each year that minority is becoming smaller, as the methods of the schools are becoming better understood. The rapid growth of law schools shows that the fact has come to be generally recognized, that a student who desires the best insight into legal principles, and the most thorough and systematic knowledge of law as a science, should seek it in the schools rather than in the offices. At the period of the Revolution, there was not a law school in this country, but in 1784 one was established at Litchfield, Connecticut, by Mr. Reeve (afterwards Judge Reeve). That continued to be the only law school in the United States until 1817, when the Law Department of Harvard University was established, although the first law lectures in

the University of Pennsylvania were begun by Mr. Justice WILSON, of the United States Supreme Court, in 1790. The law school of Yale College was founded in 1824, and in 1825 the law school of the University of Virginia was established. The Cincinnati law school was started a few years later, in the year 1833. Chancellor KENT was appointed Professor of Law in Columbia College in 1823, but his lectures were delivered to undergraduates, and not to law students, who were studying the law as a profession. The law school of Columbia College was not established until 1858. In 1859, when the law school of the University of Michigan was established, there were only fourteen law schools in the United States, and only half that number had any students worth mentioning. According to the report of the Commissioner of Education for 1885-86, there were forty-nine schools of law in this country at that time, and since that report was issued, several other schools have been instituted.

In Germany, the law is studied uniformly at the universities, there being some twenty law schools in the empire. At Berlin, in 1885-6, the number of law students in the University was 1,286. At the University of Munich, in 1884-5, the number was 886, and at the University of Leipsic, during the same year, the number was 610. The Columbia College law school and the law school of the University of Michigan are the two largest law schools in the United States, but the number of students in both combined would fall short of the number in attendance at the University of Berlin. The number of law students in attendance on the Universities of Germany has been steadily increasing. In 1860, the number is reported to have been 2,381, in 1870, it was 2,538, and in 1880, it was 5,259. In 1882 the number was 5,327.

In the United States the total number of students studying in law schools in 1886, was 3,054. While this number is much smaller than is the number of law students studying in the German Universities, it is to be remembered, that in Germany the law requires them to study in the Universities, while here it does not. The growing favor of the law schools in this country is indicated by the fact that in 1870, there were only 1,611 students in the law schools, while in 1886, there were above twice that number in attendance on the schools.

In the article in the REGISTER already referred to, Mr. Budd contrasts the method of admission to the bar in the "olden" time with that which prevails to-day, to the exaltation and glory of the former, and the depreciation and shame of the latter. It will be interesting to examine what is there said on this subject for the purpose of seeing whether the writer has not been misled into forming an erroneous opinion, both concerning the past and the present standard of legal knowledge exacted of candidates for admission to the bar. He says: "It is not necessary in order to find a different state of things to go back to the days of laborious preparations of the old English bar—to the long apprenticeship of the Inns, to the dry discipline of pleading under the bar, before receiving a formal call, undergone by so many men whose names will live among us forever ; or, indeed, to cross the water at all."

As a matter of fact the writer labored under a serious misapprehension in writing the above. So far as England is concerned, the standard of legal education which existed "in the olden time," was a disgrace to the profession, and infinitely below what is required in that country to-day. I do not refer to the period when Sir Edward Coke and Mr. Seldon were called to the bar. When for the purpose of keeping legal business in the hands of a few, a rule was adopted that "there should not be called to the bar above eight in a year," "because the over great multitude in any vocation or profession did but bring the same into contempt," it is quite likely that candidates, in order to be one of the fortunate eight, applied themselves with remarkable diligence and came to the bar remarkably well prepared. It is obviously unfair, however, to compare a period of that kind, when rules were established simply for the purpose of excluding men from the bar, with a period when the right to practice is conceded to any one who is possessed of the requisite qualifications. When this principle of exclusiveness, adopted in order to keep the number of practicing lawyers small and make the practice of the profession lucrative, finally came to be abhorred, what was the standard of legal education that was then adopted? The question may best be answered by the author of the History of the Inns of Court, a book published in London, in 1780. In the preface to that work,

the author says : " But at this day, what are the qualifications necessary for a gentleman who is a candidate for the bar ? Is he examined every term or vacation ? No. Are any instructions given him by the benchers, or any other by their order relative to what he should read ? No. Is he obliged to give any evidence of his having read a single page of any law-book ? No. Does it appear that he can even read and write his name ? Yes. Before he is permitted to dine in the hall, he is obliged to execute a bond, conditioned for paying the cook, the butler, wash-pot, and other officers of the house, their accustomed fees and perquisites ; and this is the only proof he is *obliged* to give of his learning. What then are his qualifications for a barrister at law ? Nothing further is necessary than to produce a certificate of his having dined a certain number of times in the hall of the inn he is a member of, and of his having paid the cook's bills, etc., as before mentioned." At that time to have eaten twelve dinners in one's inn was sufficient qualification for the English bar, and eight was sufficient for the Irish bar. Now this may seem too absurd to be true, but true it was, not only at that time, but long before and after as well, and until within a very few years. But within a few years, a high standard of legal education has been established in England. Since 1877 the entire practical control of the examination and admission of solicitors has been in the hands of the Incorporated Law Society, which has created a paid Board of Examiners. One who intends to apply for admission as a solicitor must be " apprenticed " or " articulated " as a clerk to a practicing solicitor for a period of five years, unless he has taken an academic degree, in which case the time is reduced to three years. If he is without such a degree he must pass a preliminary examination for the purpose of ascertaining whether his general education is sufficient to warrant his entering on the study of law. The examination is in English history, the English and Latin languages, and in any two languages which he may select from the following : Greek, Italian, Spanish, French, and German. He is subsequently required to pass an intermediate and a final examination. These examinations are upon the law and are searching and severe. The examination of would-be barristers is in the hands of the Council of Legal Education, and the conditions are equally exacting.

The history of legal education in the United States does not tell a very different story. In the earliest years of our history the candidate for admission to the bar does not seem to have been subjected to any very trying ordeal, if we may rely on the accounts which have come down to us as to the manner in which young men were admitted into the profession in Massachusetts one hundred years ago. We are informed that a student about to enter the study of law, began by offering his services to some established practitioner, paying him a fee of one hundred dollars. After two years of study, he would be accompanied into court by his preceptor, who would ask the court's permission to present a young man for the oath of an attorney, at the same time vouching for his morals and learning. The court then asked the bar if they consented, and on their bowing their assent, the oath was administered and the new attorney introduced to the bar. The whole company would then adjourn to the tavern to celebrate the event. It was in that day the usual way of introducing the neophyte "into the full communion of the brethren," for them all to indulge in a kind of "alcoholic christening." John Adams in describing his admission to the bar says, after the oath was administered, "I shook hands with the bar, and received their congratulations, and invited them over to Stone's to drink some punch, where the most of us resorted and had a very cheerful chat."

That the standard of legal education, as fixed by the law schools, is higher than that fixed by the courts, ought to be well known to every intelligent member of the profession, who has any knowledge of the work which the law schools of this country are doing. That the standard of the law schools is in advance of that of the courts, may perhaps best be shown by the fact that students who are not within a year of obtaining their diploma from the law schools, may frequently gain admission to the bar in States where no prescribed period of study is required; showing that the schools are at least a year in advance of the courts in their requirements. The catalogue of the Michigan University Law School for the present year shows that in the senior class, there are forty members who are attorneys-at-law. The Dean of the Law School of the University of Pennsylvania is authority for the statement that

students who have only completed the junior year in that school do, not unfrequently, pass the bar examination in the State of Pennsylvania. The catalogue of the St. Louis Law School for the year 1887-88, contains the following statement: "Perhaps the best proof of the success with which the elementary course of this year may be made to apply to the entire field, lies in the considerable number of students who find themselves able to pass the ordinary examination in open court for admission to the bar at the end of the junior year. While the Faculty do not advise this, they take a just pride in the fact that no student who could pass the regular junior examination has, so far as they are aware, ever been rejected upon a public examination for admission to the bar, although some students are lost to the school every year by this process."

Mr. Budd charges that the law schools have lowered the educational standard of the bar, by shortening the period of studentship. "This," he says, "has come about as follows: to encourage law schools, rules of court, or acts of legislature have made diplomas of schools, or of certain favored schools, sufficient evidence of fitness on the part of its recipient to be admitted to practice. The diploma, we have seen, can be obtained in a period of two years. It soon seemed to the courts that it was unjust to keep out of practice for a year men who for reasons satisfactory to themselves, did not go to a law school, while students who had started at the same time with them in the course of legal training, and who, perhaps, knew no more, were allowed to practice; as a result, the period of studentship was shortened, so as to allow the student of any kind, to present himself for examination by the court or its appointed examiners, at the end of two years." This is a misapprehension. Our forefathers once had the idea that every one who intended to go into a trade or a profession ought to serve a certain period of apprenticeship before they could become qualified "to set up for themselves." The restriction was gradually removed as to trades and then abandoned as to the professions. But the law schools were not in any way, directly or indirectly, responsible for the removal of the definite period of study exacted of candidates for admission to the bar. They were no more responsible for the abandonment of the time limit in the case of those

seeking admission to the bar, than they were responsible for its abandonment in the case of tinsmiths and blacksmiths. That the Columbia College Law School, for instance, did not effect the change in New York is clear, because the change in that State was made long before the law school was established. The school was not established until 1858, and for years before, no period of study was required. That the Michigan University Law School did not effect the change in Michigan, is clear for the very same reason. The change was effected in Michigan before the law school was established. And so we might go on through the list of States, and we should find that in almost every State, the change was effected before any law school was established in the particular State. Samuel Warren of England in a book published by him in 1835, declares that in the United States, "there exists the greatest latitude of admission to the bar." In speaking of the bar in this country he says: "The same individual, either alone or in partnership, practices both as counsellor and attorney. He also takes pupils, each paying about £20 a year, whom he teaches in his office, as an attorney's clerk is taught in England, for about two or three years, dependent on his being twenty-one years of age, or under. That period expired, he gives public notice of his intention to apply for liberty to practice. After passing a private, desultory, brief, and exclusively professional *viva voce* examination, lasting from half an hour to an hour, or even longer, and having produced testimonials of moral character from his master; the latter, or any other member of the bar, moves the court for the admission of the candidate; and that having been effected, he is at liberty to practice. The gentleness of the examination may be inferred from the fact, that an appeal from the decision of the examiners, is rarely or never heard of." At that time there were only two or three law schools in the United States of any consequence whatever. To suppose that the low standard governing admission to the bar in the United States was due to the existence of these schools, and that the period of study had been reduced to two years in their interest, is to make a very sweeping supposition indeed, and one that rests on nothing that is any more substantial than "the baseless fabric of a dream."

Mr. Budd states that "At the end of two years, so called,

but in reality two courses of instruction, which may embrace, from the beginning of the one to the end of the other, only some twenty months and include only sixteen months of actual instruction, an examination is held by the professors upon what they have taught, a diploma is granted to the successful candidate, and this diploma (through the complaisance of the courts, and their desire to foster the law school) in many, if not all parts of the Union, entitles the student, who has complied with rules of court as to registration, to admission to the bar." If this statement is true, it simply proves that the courts of the United States place a high estimate on the law schools and the training that is there received, for why, if it were otherwise, should they desire to "foster" the schools. But whatever may be the opinion of the courts on this subject, the statement that the diploma of the law school "entitles" to admission to the bar is hardly warranted by the facts.

The diplomas of the New York law schools do not entitle their holders to admission to the New York bar, although at one time the rule was otherwise. The diploma of the Michigan University Law School does not admit to the Michigan bar. The diploma of Harvard and Boston Law Schools will not admit to the Massachusetts bar. Neither does the diploma of the Yale Law School admit to the Connecticut bar. In some of the States, it must be admitted, the diplomas of law schools are accepted as affording sufficient evidence of legal qualifications, to entitle their holders to admission to the bar, without examination. But the diplomas of almost all the leading law schools do not admit to the bar in the States where those schools are located. If the diploma of the law school of the University of Pennsylvania, of the Union College of Law at Chicago, and of the St. Louis Law School, admit to the bar in their respective States at the present time, the practice is exceptional. Moreover, there is no reason to think that the examination of applicants in open court in Pennsylvania, Illinois, and Missouri is more searching than is the examination for the degree of LL. B. in the schools named. The writer has reason to believe that the very contrary is the case.

The writer of the article in question also says: In the first place, no means are adopted to insure that the student who

attends the lectures is capable of comprehending them; he may come to them utterly unprepared, and with the remotest knowledge of legal principles, without even the foundation of a good education, such as is generally obtainable by an academic or collegiate course, and in schools where there is no division into classes for the purpose of hearing lectures, he may be thrown at once right into the middle of the course, and after hearing advanced lectures on equity in his first year, may, in his second, be taught what are estates." This statement contains in effect two charges. The first is, that no means are adopted "to insure that the student who attends the lectures is capable of comprehending them." This is a serious mistake. The law schools have adopted a system of preliminary examination for the purpose of ascertaining whether students have acquired such an education as will enable them to comprehend the study of law, and justify them in entering on a course of legal education. In the Law School of the University of Michigan, for instance, the rule governing the admission of students is as follows :

"Graduates of colleges, and students who have honorably completed an academical or high-school course, and who present a certificate or diploma from the academy or high school will be admitted without preliminary examination. No student who does not present such certificate or diploma will be admitted as a candidate for a degree, until he has passed a satisfactory examination in arithmetic, geography, orthography, English composition, and the outlines of the history of the United States, and of England. The examination will be conducted in writing, and the papers submitted by the applicants must evince a competent knowledge of English grammar."

This provision undoubtedly deters many from coming to the law school at all, inasmuch as by studying in an office, they can be admitted to the bar without passing any examination in any of the subjects above indicated. The schools which do not insist on such a preliminary examination, and there are some which do not, omit it not from choice but rather from necessity. They reason that if they reject a student applying for admission it will not result in keeping him from the profession, but will merely compel him to read by himself, or in an office, instead of in the law school, and that it will be much better for

him to receive his training in the school. Hence the admission of such men to the privileges of some law schools. Those very schools would rejoice if a law could be passed in every State requiring such a preliminary examination, of every one who presents himself for admission to the bar. The lack of such a requirement is the fault of the profession and not of the schools.

But if it were true as charged, that the law schools receive as students, those who are "without even the foundation of a good education, such as is generally obtainable by an academic or collegiate course," how does that affect the question under discussion? What precaution have the courts taken to-day, or have they ever taken, to insure that no one shall study law or be admitted to the bar, who has not first acquired such an education as is above referred to? Certainly none at all, in this country, as we have already indicated, except in two or three of the States. In Pennsylvania and in Delaware, there is required a preliminary examination in all branches of a common high school education. New York, while not requiring any familiarity with the Latin language, demands that candidates should have passed, satisfactorily, what is known as the Regents' examination. But these States are exceptions to the general rule, which in almost all of the States does not require and never has required the applicant for admission to the bar, to pass any preliminary examination in general knowledge, for the purpose of testing his culture. And what precautions does the practitioner take if a student applies for admission to his office to study law? Does he ask him whether he has a diploma, and if he has not, proceed to examine him in history, and mathematics, and literature? And are the law schools responsible, because the courts and practitioners do not require such an examination of applicants?

The second charge is that the law schools plunge their students *in medias res*, having no graded course of instruction. There may be, perhaps, two or three law schools where such is the case, but those schools constitute an exception to the rule. The course of instruction is graded at Harvard, Columbia, Michigan University, Yale, Chicago, Boston, St. Louis, Cincinnati, San Francisco, University of Iowa, University of Wis-

consin, at Cornell, and most of the others. As to the few schools which do not grade their course, it may be said by way of justification, that there are many able and learned men, as well as experienced teachers of law, who do not believe it makes any very great difference whether a graded course of instruction is pursued or not. The writer of this article does not coincide in that opinion, but believes a graded course is much to be preferred. He is not prepared, however, to denounce schools which pursue a contrary method.

The writer of this article would be glad if a law could be enacted in every State, requiring candidates for admission to the bar, to pursue a course of legal study for a period of three years. Such a period is none too long, and no good is accomplished by allowing men to come to the bar, who have studied only for a single year. It is a misfortune to any man to be admitted in that way, and it would be about as well to allow it to be understood, that any man would be allowed to practice law who wanted to, whether he knew anything or not. In the Roman Empire, candidates for the bar studied the law for four years, and in the time of Justinian, the period was lengthened to five years. The writer of the article already alluded to, complains that, while the medical profession is struggling to make a three years' course a *sine qua non* to the healing art, the legal profession should be content with a two years' course. That it should be so, is certainly matter of regret, and I cordially unite with him in the hope that there is a reaction coming. It is to be borne in mind, however, that the medical schools can better afford to lengthen their period of study than can the law schools. The tendency of legislation in the States to-day, is in the direction of allowing no one to practice medicine who does not hold a diploma from a medical college. Such a regulation gives the medical schools a great advantage over the law schools, compelling as it does, all medical students to resort to colleges of medicine, and thereby enabling them to lengthen their courses of study. While the law faculties of the United States do not ask for similar legislation in the interest of law schools, they would hail with delight a law requiring students to pursue the study of law for three years prior to their admission to the bar, and with such legislation to justify them in so doing, would hasten to extend

their courses of instruction accordingly. But what justice is there in calling on the schools to adopt a three years' course when the courts are every day admitting to the bar, men who have only studied for a year, or even for a less time than that?

We may concede that matters of practice can be better mastered in an office than in a law school. And any who are of the opinion that practice should claim the student's most particular attention, and that law as a science is of little consequence, may probably be right, in thinking that a law office is a better place for a student than a law school. But as Sir William Blackstone has said: "If practice be the whole he is taught, practice must also be the whole he will ever know: if he be uninstructed in the elements and first principles upon which the rule of practice is founded, the least variation from established precedents, will totally distract and bewilder him. *Ita lex scripta est* is the utmost his knowledge will arrive at."

On the other hand, if the student desires to *know* the law, to master its principles, and understand its reasons, any one who is thoroughly familiar with the methods of the best law schools of to-day, and of the thoroughness with which they are doing their work, will not have a rational doubt as to the place where the law should be studied. The duty of a law professor is to teach his students how to study and then see that they do it. My experience has taught me that students will do about as much work as they are required to do. If they are forced to a high standard, they will go there and master the subject of their study, but otherwise they will neglect their work and know nothing or little about it.

I conclude this article with the opinion of a distinguished foreigner, Mr. Heron of Dublin, in his work on the History of Jurisprudence (London, 1860), declaring that in the department of legal reform, and also in that of legal authorship, the United States have surpassed England, and attributing the fact "to the superior legal education which the American lawyers receive, and to the schools of law established throughout the United States."

HENRY WADE ROGERS.